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Attorney for Defendant
CITY OF MILPITAS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, vs. CITY OF MILPITAS, Defendant.	**Case No.: 5:15-cv-04444-RMW-HRL** **ANSWER TO FIRST AMENDED COMPLAINT**

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendant CITY OF MILPITAS answers the First Amended Complaint (FAC) of Plaintiff U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION by responding to the numbered paragraphs of the FAC as follows:

JURISDICTION AND VENUE

1. Defendant ADMITS the allegations of paragraph 1.

2. Defendant ADMITS the allegations of paragraph 2.

INTRADISTRICT ASSIGNMENT

3. Defendant ADMITS the allegations of paragraph 3.

PARTIES

4. Defendant ADMITS the allegations of paragraph 4.

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5. Defendant ADMITS that at all relevant times it has had at least 20 employees. Defendant AVERS that it is a general law city incorporated pursuant to California Government Code section 34000 et seq. Defendant DENIES the remaining allegations of paragraph 5.

6. Defendant ADMITS the allegations of paragraph 6.

ADMINISTRATIVE PROCEDURES

7. Defendant ADMITS that Lori Casagrande filed a discrimination charge with Plaintiff against Defendant on September 17, 2012, that Plaintiff issued a determination letter to Defendant on September 24, 2014, and that Plaintiff issued a failure of conciliation notice to Defendant on February 11, 2015. Defendant DENIES the remaining allegations of paragraph 7.

STATEMENT OF CLAIMS

8. Defendant ADMITS the allegations of paragraph 8.

9. Defendant ADMITS that Rhonda Anderson received an average score of 91.33, Margaret Espinoza received an average score of 89.00, and Rosvida Galindez Penas received an average score of 84.20. Defendant DENIES the remaining allegations of paragraph 9.

10. Defendant ADMITS the allegations of paragraph 10.

11. Defendant DENIES the allegations of paragraph 11.

12. Defendant DENIES the allegations of paragraph 12.

13. Defendant DENIES the allegations of paragraph 13.

DEFENSES

Defendant states the following defenses without admitting, acknowledging, or assuming that Defendant bears the burden of proof as to any of them.

FIRST DEFENSE

The FAC fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The claims are barred to the extent they were not filed within the applicable statutes of limitation and/or administrative filing periods.

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Attorneys at Law

THIRD DEFENSE

The claims are barred, and the court lacks jurisdiction over this matter, to the extent that the alleged aggrieved claimants failed to timely and properly exhaust all necessary administrative, statutory, and/or jurisdictional prerequisites for the commencement of this action.

FOURTH DEFENSE

The actions taken by Defendant with regard to the alleged aggrieved claimants were taken for legitimate, nondiscriminatory reasons.

FIFTH DEFENSE

The actions taken by Defendant with regard to the alleged aggrieved claimants, and the policies, procedures, and standards applied to the alleged aggrieved claimants, were job-related and consistent with business necessity, and any actions taken by Defendant would have been taken for those legitimate reasons.

SIXTH DEFENSE

The claims are barred, in whole or in part, by the doctrines of estoppel, laches, unclean hands, and/or waiver.

SEVENTH DEFENSE

If the alleged aggrieved claimants are entitled to any recovery, such recovery must be reduced by the amount attributable to the alleged aggrieved claimants' failure to mitigate damages. To the extent the alleged aggrieved claimants have mitigated their damages, Defendant is entitled to a credit or set-off.

EIGHTH DEFENSE

If the alleged aggrieved claimants are entitled to any recovery, such recovery must be reduced by the amounts the alleged aggrieved claimants received from any collateral source, and Defendant is entitled to set off such amounts.

NINTH DEFENSE

Defendant is not, by way of principles of respondeat superior or otherwise, vicariously liable for any act or omission of any person.

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TENTH DEFENSE

Defendant acted reasonably and in good faith at all times material herein based on all relevant facts and circumstances known to Defendant at the time it so acted. Accordingly, any recovery or relief sought by the FAC is barred.

Defendant may have additional defenses that cannot be articulated at this time due to Plaintiff's failure to particularize its claims and due to its failure to provide more specific information concerning those claims. Defendant therefore reserves the right to assert additional defenses upon further particularization of Plaintiff's claims, upon examination of documents provided, upon discovery of further information concerning the alleged claims, and upon the development of other pertinent information.

PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully requests that this Court grant the following relief:

1. That the FAC be dismissed in its entirety;
2. That judgment be entered in favor of Defendant and against Plaintiff on all claims;
3. That Defendant be awarded costs; and
4. That the Court grant such other relief as it deems just and proper.

Dated: December 7, 2015

RENNE SLOAN HOLTZMAN SAKAI LLP

By: /s/ Erich W. Shiners
Erich W. Shiners
Attorney for Defendant
CITY OF MILPITAS